IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6115 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMBAI MAVJI GONDALIA THORUGH P.O.A. HOLDER

Versus

STATE OF GUJARAT

Appearance:

MR YS MANKAD for the Petitioner.

Mr.R.M. Chauhan, Assistant GOVERNMENT PLEADER, for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/09/2002

ORAL JUDGEMENT

By filing this petition, it is prayed that even though the petitioner has purchased the land in question

in public auction, which was held by the Gram Panchayat, the TDO is not issuing Sanad to him. It is, therefore, prayed that the respondent No.2 may be directed to issue Sanad to the petitioner. The case of the petitioner is that the petitioner was granted land, admeasuring 154 sq. metres, and the said land is situated at Village Mirzapar, Taluka, Bhuj. The petitioner being the highest bidder in the public auction, her bid was accepted by the Panchayat and, according to the petitioner, she had fully paid the purchase price and that entry was also posted in the revenue record accordingly. The petitioner, thereafter, gave necessary application to the TDO for issuing Sanad in her favour, but since the Sanad was not issued by the respondent No.3, the petitioner has approached this Court by way of this petition, with a prayer that the petitioner may be issued necessary Sanad.

The petition is resisted on behalf of the District Development Officer and affidavit-in-reply has been filed by one N.M. Gosai, Deputy District Development Officer, Kutch District Panchayat. The said reply is filed on behalf of respondent No.2, the District Development Officer. In paragraph 4 of the reply, it is averred that as per the record, it is clear that the upset price was fixed at Rs.60/- per sq. metre and, therafter, an auction was held for sale of the land in question. The petitioner being the highest bidder, her bid was accepted by the Gram Panchayat. Thereafter, the petitioner started illegal construction in the land in question, though no Sanad was issued and no possession was handed over to the petitioner by the Taluka Development Officer and that even development permission was not granted by the TDO, Bhuj for the purpose of construction. It is stated that the Resolution passed by the Taluka Panchayat, bearing No.79, dated 30th March, 1999, resolving in favour of the present petitioner is without jurisdiction and without any authority. It is also stated that the District Development Officer, Kutch has suspended the said Resolution on 9th June, 1999 under the provisions of Section 104(2) of the Gujarat Panchayats Act, 1993. In paragraph 5 of the reply, it is stated by the Deputy District Development Officer that the Gram Panchayat had wrongly auctioned the land in question, though it was a public road and being used by the public at large and if permission for construction is given, it will create obstruction to the public at large. It is clearly averred in the reply that the petitioner is trying to purchase the land from the Gram Panchayat, which is, as such, a public land, used for public purpose as a road.

On behalf of the Taluka Development Officer, affidavit-in-reply is filed by one Bhalodiya, justifying the action for not handing over Sanad to the petitioner and the petition is resisted by appropriate averments made by him in his reply. It is averred in paragraph 5 of the reply that the land in question is a public land and is used by the Villagers as a public road and, therefore, the respondent No.3 has not issued Sanad to the petitioner. Proper description of the area is also given in the said reply.

Mr.Y.S.Mankad, learned Advocate appearing for the petitioner, however, vehemently submitted that the Gram Panchayat has auctioned the land in favour of the petitioner. He submitted that the Panchayat, after necessary enquiry, has held the public auction. He submitted that, at the relevant time, the TDO or any Officer of the Panchayat has never objected to such auction and, therefore, this Court should issue a writ of mandamus, directing the respondent-TDO to issue Sanad, as, it should be presumed that the land belongs to the Panchayat and it is not a part of the public road. However, in my view, it is not possible to accept the said submission of Mr.Mankad. Simply because the Gram Panchayat initiated auction proceedings, that itself cannot prove that the Gram Panchayat is the owner of the land in question and that it is not a part of public road. Even otherwise, before issuing the Sanad, the authority is bound to verify about the title and the nature of the land in question. This Court is not expected to carry out the exercise of deciding the title and the nature of the land, or whether it is a part of public road, etc. The Deputy DDO as well as the TDO have filed detailed replies, showing as to how the land in question is a public road. This Court, therefore, cannot decide these disputed questions of fact. However, since the DDO has not given any hearing to the petitioner, who is the auction purchaser and who has invested some amount, it would be just and proper to remand this matter to the DDO for reconsideration as to whether the area in question is part of a public road and whether the auction held by the Panchayat is in accordance with law or not. The DDO, after hearing the present petitioner, may accordingly take fresh decision in the subject matter. After hearing the petitioner and after considering the documentary evidence, ultimately, if it is held that the area is part of a public road and no Sanad can be issued in favour of the petitioner, naturally, the petitioner will have no right to demand for such Sanad, subject to challenging such decision in accordance with law before the appropriate authority. However, if it is decided in

favour of the petitioner, and if it is held that the auctioned land is not part and parcel of the public road or that no obstruction is created in case the petitioner is permitted to construct, consequential order will be passed thereafter by the DDO for the purpose of issuing Sanad in favour of the petitioner. It is for the DDO to decide this question after hearing the petitioner and after considering the record. It is clarified that this Court has not expressed any opinion on the merit of the issue either way. The matter is accordingly sent back to the DDO, Kutch-Bhuj to decide the question whether any Sanad can be issued to the petitioner and whether the land purchased by the petitioner is part of a public road or whether, if any construction is permitted, would it result in any obstruction to the public at large. The decision may be taken as per the record and as per the available material, which may be available with the DDO. However, since the petitioner invested some amount by purchasing the land in question by way of public auction, the DDO may give personal hearing before taking final decision in this connection. The decision may be taken expeditiously and preferably within a period of six months from today. The petitioner, however, is directed to maintain status quo and she will not try to put up any construction or to deal with the land in question in any manner, and she will strictly observe the status quo prevailing as on today.

The petition is accordingly partly allowed to the aforesaid extent and the matter is accordingly sent back to the DDO for fresh decision, as indicated above. Rule is partly made absolute to the aforesaid extent, with no order as to costs.

4th September, 2002 (P.B. Majmudar, J.)

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(apj)